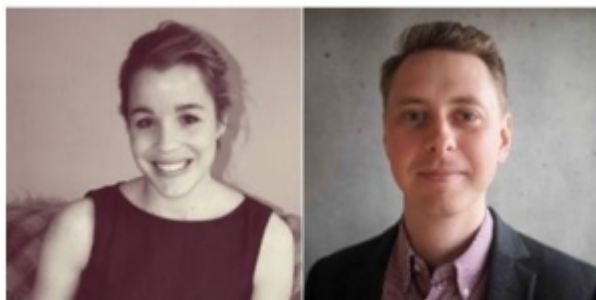


## Welcoming a UN special rapporteur to the Online Human Rights Choir



*The **United Nations Human Rights Council** (UNHRC) will soon appoint a special rapporteur to investigate the right to privacy in the digital age. LSE alumna **Anri van der Spuy**, now a fellow at the UN Secretariat of the IGF and her colleague Carl Gahnberg (who both write here in a personal capacity that does not reflect the views of the IGF) evaluate the contemporary relevance of this thematic mandate in light of a sampling of other*

*recent developments that may have a bearing on the future of the Internet and human rights.*

At the UNHRC's 28<sup>th</sup> session held in Geneva in March, a resolution was adopted in which 'deep' concern about the negative impact of pervasive practices of online monitoring and surveillance on the enjoyment and exercise of human rights was noted. The resolution created a mandate for the appointment of a special rapporteur on the right to privacy in the digital age; applications for which closed yesterday, 30 April 2015.

Spearheaded by Germany and Brazil, the resolution received widespread support from states including the UK, Russia, the United States, and China (some of which have **far from stellar online freedom records**). Among other things, it confirms the duties of both governments and businesses to respect human rights, and recognizes the need to examine proportionality assessments in relation to online surveillance practices.

### A special or not-so-special development?

While the UNHRC has affirmed that 'offline' rights apply equally online (e.g. **resolution 26/13**), a number of initiatives and forums have also tried to imbue Internet governance debates with human rights considerations over the past few years. The prominent role of privacy in these discussions is visible from a mere excerpt from April's Internet governance calendar, where almost any Internet-related topic was connected to the issue of privacy:

- On 15 April, for example, the Global Commission on Internet Governance issued a **call** for a 'new social compact toward digital privacy and security'. In the same week, the Global Conference on Cyberspace (GCSP2015) in The Hague concluded with a chair's **statement** that stressed the need to respect online rights like privacy while safeguarding both trust and cybersecurity.
- For the duration of April the Internet Governance Forum has furthermore been reviewing the 247 **workshop proposals** submitted for presentation at the annual IGF meeting to be held in João Pessoa, Brazil, in November this year. While there are eight categories of workshop topics (some of which may overlap), this year the largest percentage of proposals submitted (28%) are related to "Internet and human rights"; followed by "Cybersecurity and Trust" (16%).
- The **NETmundial Initiative** (NMI) furthermore recently published its draft **Terms of Reference** for public input by the end of April. NMI aims to, at least according to its current mission statement, 'provide a platform' to 'address Internet issues' and 'advance the implementation of the **NETmundial Principles**', which emphasize that human rights should underpin Internet governance principles.
- The institutional evolution of an initiative launched at an earlier meeting of the Internet Corporation of Assigned Names and Numbers (ICANN) (**previously discussed here**) indicate that human rights considerations are permeating narrow Internet governance too. A cross-community working party (**CCWP**) within the echelons of ICANN's multistakeholder community adopted a charter this month that defines how it hopes to explore ICANN's corporate and social responsibility to respect human rights in the next few months.



- And on 24 April, the International Telecommunications Union (ITU) **held the first** of a series of workshops to celebrate its 150<sup>th</sup> anniversary. In stressing the importance of trust to the future knowledge infrastructure, the ITU's Chaesub Lee suggested changing the organisation's name to the 'International Trust Union'; and pointed out that privacy is 'the other side of the trust coin'.

Events like these are admittedly not fully representative of the prominence of (online) human rights on the current Internet governance agenda, but do provide at least an indication that there is a healthy awareness of the importance of the issue. Once appointed, the rapporteur will join this rising tide of initiatives aimed at patching up an Internet that is rapidly hemorrhaging public trust – but what can he or she hope to contribute?

### Joining the choir or taking a lead?

The rapporteur will presumably be someone with specific expertise on the theme of privacy in relation to the 'digital age' (a rather broad concept) and will, once appointed, serve in his or her personal capacity. (His or her **remuneration** will, incidentally, be 'the satisfaction of working towards the realization of human rights'.) He or she will be able to follow diverse methods of work, including issuing urgent appeals where there are imminent or ongoing human rights violations, doing country visits and/or investigating non-state actors, and developing authoritative norms.

How effective these methods will be remains to be seen. While states and business enterprises are compelled to cooperate with the rapporteur in his or her investigations, for instance, one has to wonder how transparent they will be and to what extent the rapporteur will be able to decipher the obfuscating technological explanations that are bound to be leveled at him or her. **Doctrinal differences between Northern American and European approaches** to the right to privacy, not even to speak of the rest of the world, will furthermore complicate the rapporteur's ability to produce any substantive norms and/or to make recommendations for accountability mechanisms. These differences also plague the variety of ongoing initiatives with similar mandates of protecting trust and privacy online; and while a growing awareness of the issue is a positive development, diverse understandings of privacy relating to very different privacy challenges risks building policy silos that will struggle to address this global concern.

Whether the rapporteur will take a leading role in addressing the right to privacy in the digital age, or will merely become another voice in the growing choir, will arguably depend on the level of cooperation offered by the many stakeholders involved in practices that may impact privacy in the 'digital age'; the rapporteur's ability to develop at least some common understanding of privacy (and the justifiable limits thereof); and the extent to which he or she can function as a focal point for interpretations of privacy to help bridge emerging policy silos. While the rapporteur will be able to clarify his or her three-year mandate more clearly in a first report to the UNHRC, one thing is certain: the rapporteur has quite the job waiting for him or her.

*This post gives the views of the authors and does not represent the position of the LSE Media Policy Project blog, nor of the London School of Economics and Political Science.*

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